

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

LNV Corporation,

Plaintiff,

v.

No. 13-cv-1926 (JNE/LIB)
ORDER

Outsource Service Management, LLC
d/b/a Presidium Asset Solutions and
BF-Negev, LLC,

Defendants.

In its Complaint, Plaintiff LNV Corporation asserts that the “Court possesses jurisdiction in accordance with 28 U.S.C. § 1331 because LNV’s right to relief depends on a resolution of the applicability of, among other things, 12 U.S.C. §§ 1821(d)(3)-(6), (d)(13)(D).” LNV’s citation there is to the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) that govern the administrative adjudication of claims against failed banks in receivership with the Federal Deposit Insurance Corporation

The Court questions whether the manner in which FIRREA arises and the role it plays in this case is sufficient to confer subject matter jurisdiction under § 1331. *See Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (noting that a court has “an independent obligation to determine whether subject-matter jurisdiction exists, even when no party challenges it”). *Compare Vaden v. Discover Bank*, 556 U.S. 49, 60, 70 (2009) (“Federal jurisdiction [under § 1331] cannot be predicated on an actual or anticipated defense . . . [n]or can federal jurisdiction rest upon an actual or anticipated counterclaim.”), *with Pub. Serv. Comm’n of Utah v. Wycoff Co.*, 344 U.S. 237, 248 (1952) (“Where the complaint in an action for declaratory judgment seeks in essence to assert a defense to an impending or threatened state court action, it is the character of the

threatened action, and not of the defense, which will determine whether there is federal-question jurisdiction in the District Court.”).

The parties are therefore ordered to each submit a single brief addressing whether the Court has subject matter jurisdiction over this case by May 28, 2015. The issue will be taken up at the hearing on LNV’s second motion for summary judgment that is currently scheduled for June 1, 2015.

Dated: May 6, 2015

s/Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge